

PATRICK J. REILLY, ESQ., Nevada Bar No. 6103  
preilly@bhfs.com  
 MAXIMILIEN D. FETAZ, ESQ., Nevada Bar No. 12737  
mfetaz@bhfs.com  
 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
 100 North City Parkway, Suite 1600  
 Las Vegas, NV 89106-4614  
 Telephone: 702.382.2101  
 Facsimile: 702.382.8135

*Attorneys for BMW Financial Services NA, LLC and  
 BMW of North America, LLC*

**UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA**

JAN SHEINFELD, an Individual,  
  
 Plaintiff,  
  
 v.

BMW FINANCIAL SERVICES NA, LLC,  
 a foreign limited liability company; BMW  
 OF NORTH AMERICA, LLC, a foreign  
 limited liability company; JRJ  
 INVESTMENTS, INC. d/b/a BMW OF  
 LAS VEGAS, a Nevada corporation;  
 DOES 1 through 20, inclusive; and ROE  
 CORPORATIONS 1 through 20, inclusive,  
  
 Defendants.

Case No.:

**NOTICE OF REMOVAL UNDER 28 U.S.C. §  
 1331**

**(Formerly Case No. A-18-782227-C, filed in  
 the Eighth Judicial District Court, Clark  
 County, Nevada)**

PLEASE TAKE NOTICE that Defendants BMW Financial Services NA, LLC and BMW  
 of North America, LLC (collectively the “Removing Defendants”) hereby remove this action  
 from the Eighth Judicial District Court in Clark County, Nevada, Case No. A-18-782227-C, to the  
 United States District Court for the District of Nevada. This Court has federal question  
 jurisdiction under 28 U.S.C. § 1331.

**I. INTRODUCTION.**

Plaintiff Jan Sheinfeld (“Plaintiff”) brought an action against Removing Defendants  
 relating to an automobile lease agreement dispute and brought claims for breach of contract,  
 breach of the implied covenant of good faith and fair dealing, rescission of purchase and refund of  
 purchase price, Moss-Magnuson Warranty Act (15 U.S.C. § 2301, *et seq.*), breach of express and

1 implied warranties, and breach of obligation of good faith. Plaintiff's primary complaint is  
 2 Removing Defendants are not honoring their warranty obligations to Plaintiff. Plaintiff is seeking  
 3 to have his automobile lease agreement rescinded and refunded.

4 Federal question jurisdiction exists when a claim arises pursuant to federal law.  
 5 Removing Defendants remove this action on the basis of federal question jurisdiction because  
 6 Plaintiff's complaint contains allegations that Removing Defendants violated federal statute  
 7 Moss-Magnuson Warranty Act (15 U.S.C. § 2301, *et seq.*).

## 8 **II. THE COURT HAS FEDERAL QUESTION JURISDICTION.**

### 9 **A. The Removal is Timely Filed in the Proper Venue.**

10 Plaintiff filed this action in the Eighth Judicial District Court in Clark County, Nevada on  
 11 October 4, 2018. *See* Ex. A, Complaint. Defendant BMW Financial Services NA was served  
 12 with the summons and complaint in this matter on or about October 17, 2018. *See* Ex. B, Service  
 13 of Process Transmittal. Removal of this matter is timely. The United States District Court for the  
 14 District of Nevada is the proper place to file this Notice of Removal under 28 U.S.C. § 1441(a)  
 15 because it is the federal district court that embraces the place where the original action was filed  
 16 and is pending.

### 17 **B. Statement of Statutory Basis for Jurisdiction.**

18 This action is within the original jurisdiction of the United States District Court pursuant  
 19 to 28 U.S.C. § 1331. The statute provides that "[t]he district court shall have original jurisdiction  
 20 of all civil actions arising under the Constitution, laws, or treaties of the United States." 28  
 21 U.S.C. § 1331. Under 28 U.S.C. § 1367, this Court has supplemental jurisdiction over all other  
 22 claims in this action.

### 23 **C. Removing Defendants Meet All Other Requirements for Removal.**

24 Removing Defendants have attached to this notice copies of all process, pleadings, and  
 25 orders filed with the state court prior to the filing of this Notice of Removal.<sup>1</sup> Removing  
 26

27 <sup>1</sup> On October 29, 2018, Defendant JRJ Investments, Inc. d/b/a BMW of Las Vegas filed an  
 28 Answer, Initial Appearance Fee, and Disclosure Statement Pursuant to NRCP 7.1. *See* Ex. C,  
 Answer, Initial Appearance Fee, and Disclosure Statement Pursuant to NRCP 7.1.

1 Defendants will concurrently file a copy of this Notice in the Eighth Judicial District Court in  
2 Clark County, Nevada. Removing Defendants also concurrently served a copy of this Notice on  
3 Plaintiff.

4 DATED this 30th day of October, 2018.

5 BROWNSTEIN HYATT FARBER SCHRECK, LLP

6 BY: /s/Patrick J. Reilly

7 PATRICK J. REILLY, ESQ., NV Bar No. 6103

8 preilly@bhfs.com

9 MAXIMILIEN D. FETAZ, ESQ., NV Bar No. 12737

10 mfetaz@bhfs.com

11 100 North City Parkway, Suite 1600

12 Las Vegas, NV 89106-4614

13 Telephone: 702.382.2101

14 Facsimile: 702.382.8135

15 *Attorneys for Defendants BMW Financial Services NA,*  
16 *LLC and BMW of North America, LLC*

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106-4614  
702.382.2101



**CERTIFICATE OF SERVICE**

Pursuant to Fed. R. Civ. P. 5(b), and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing **NOTICE OF REMOVAL UNDER 28 U.S.C. § 1331** was served via electronic service on the 30th day of October, 2018, to the addresses shown below:

Kristofer D. Leavitt, Esq.  
Leavitt Legal Group, P.C.  
612 S. 10<sup>th</sup> Street  
Las Vegas, NV 89101  
[kleavitt@leavittlegalgroup.com](mailto:kleavitt@leavittlegalgroup.com)  
(702) 423-7208

*Attorneys for Jan Sheinfeld*

Martin A. Little, Esq.  
Alexander Villamar, Esq.  
Howard & Howard Attorneys PLLC  
3800 Howard Hughes Parkway  
Suite 100  
Las Vegas, NV 89169  
[mal@h2law.com](mailto:mal@h2law.com)  
[av@h2law.com](mailto:av@h2law.com)  
(702) 257-1483

*Attorneys for JRJ Investments, Inc.  
d/b/a BMW of Las Vegas*

/s/Susan Roman  
An employee of Brownstein Hyatt Farber Schreck, LLP



# **Exhibit “A”**

Electronically Issued  
10/5/2018 7:32 AM

1 SEI  
2 Kristofer D. Leavitt, ESQ  
3 LEAVITT LEGAL GROUP, P.C.  
4 Nevada Bar No 13173  
5 612 S. 10th Street  
6 Las Vegas, Nevada 89101  
7 (702) 423-7208  
8 kleavitt@leavittlegalgroup.com

Attorney for Plaintiff Jan Sheinfeld

DISTRICT COURT

CLARK COUNTY, NEVADA

JAN SHEINFELD, an individual

Plaintiff,

vs.

BMW FINANCIAL SERVICES NA, LLC, a  
foreign limited liability corporation; BMW OF  
NORTH AMERICA, LLC, a foreign limited  
liability corporation; JRJ INVESTMENTS,  
INC.d/b/a BMW OF LAS VEGAS, a Nevada  
limited liability corporation; DOES 1 through  
20, inclusive; and ROE CORPORATIONS 1  
through 20, inclusive;

Defendants.

Case No.: A-18-782227-C

Dept. No.: XXIV

SUMMONS

SUMMONS – CIVIL

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDED AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.  
READ THE INFORMATION BELOW.

TO THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff(s) against you for  
the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served  
on you, exclusive of the day of service, you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal  
written response to the Complaint in accordance with the rules of the

1 Court, with the appropriate filing fee.

2 b. Serve a copy of your response upon the attorney whose name and address  
3 is shown below.

4 2. Unless you respond, your default will be entered upon application of the  
5 Plaintiff(s) and failure to respond will result in a judgment of default against you for the relief  
6 demanded in the Complaint, which could result in the taking of money or property or other relief  
7 requested in the Complaint.

8 3. If you intend to seek the advice of an attorney in this matter, you should do so  
9 promptly so that your response may be filed on time.

10 4. The State of Nevada, its political subdivisions, agencies, officers, employees,  
11 board members, commission members and legislators each have 45 days after service of this  
12 Summons within which to file and Answer or other responsive pleading to the Complaint.

13  
14 Submitted by

15 Kristofer D. Leavitt  
16 LEAVITT LEGAL GROUP, P.C.

STEVEN D. GRIERSON  
CLERK OF THE COURT 10/15/2018

By: Ordina Amos  
Deputy Clerk  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155



Electronically Filed  
10/4/2018 12:08 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 **COMP**  
2 Kristofer D. Leavitt, ESQ  
3 LEAVITT LEGAL GROUP, P.C.  
4 Nevada Bar No 13173  
5 612 S. 10th Street  
6 Las Vegas, Nevada 89101  
7 (702) 423-7208  
8 kleavitt@leavittlegalgroup.com  
9  
10 *Attorney for Plaintiff Jan Sheinfeld*

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 JAN SHEINFELD, an individual  
10 Plaintiff,

Case No.: A-18-782227-C  
Dept. No.: Department 24

11 vs.

**COMPLAINT**

12 BMW FINANCIAL SERVICES NA, LLC, a  
13 foreign limited liability corporation; BMW OF  
14 NORTH AMERICA, LLC, a foreign limited  
15 liability corporation; JRJ INVESTMENTS,  
16 INC.d/b/a BMW OF LAS VEGAS, a Nevada  
17 limited liability corporation; DOES 1 through  
18 20, inclusive; and ROE CORPORATIONS 1  
19 through 20, inclusive;

**Arbitration Exemption Requested:**

**Amount in Controversy Exceeds \$50,000.00**  
**Action Seeking Equitable Relief**

Defendants.

19 COMES NOW Plaintiff JAN SHEINFELD (hereinafter as "Plaintiff"), by and through  
20 his counsel of record, Kristofer D. Leavitt, Esq. of LEAVITT LEGAL GROUP, P.C., and hereby  
21 alleges as follows:

22 **PARTIES, JURISDICTION, AND VENUE**

23  
24 1. Plaintiff is, and was at all times relevant to the claims herein, a resident of Clark  
25 County in the State of Nevada.

26 2. Defendant BMW FINANCIAL SERVICES NA, LLC ("BMW FS"), is a foreign  
27 limited liability corporation that, at all times relevant to the claims herein, has been authorized to  
28

1 conduct business, and has conducted business, in the State of Nevada.

2 3. Defendant BMW OF NORTH AMERICA, LLC ("BMW NA"), is a foreign  
3 limited liability corporation that, at all times relevant to the claims herein, has been authorized to  
4 conduct business, and has conducted business, in the State of Nevada.

5 4. Defendant JRJ INVESTMENTS, INC.d/b/a BMW OF LAS VEGAS ("BMW  
6 LV"), is a Nevada limited liability corporation that, at all times relevant to the claims herein, has  
7 been authorized to conduct business, and has conducted business, in the State of Nevada.

8 5. Defendants sued herein under the fictitious names of DOES 1 through 20; and  
9 ROE CORPORATIONS 1 through 20, inclusive, are presently unknown to Plaintiff, however,  
10 are believed to be in some respect liable for the acts and omissions, whether intentional,  
11 negligent, or otherwise, alleged herein.

12 6. The actions and/or omissions sued upon herein were performed or occurred in  
13 Clark County in the State of Nevada and Plaintiff has suffered damages in excess of \$15,000.00,  
14 thus providing the District Court with subject matter jurisdiction and making the District Court  
15 the proper venue for Plaintiff to seek relief.

16 **GENERAL ALLEGATIONS**

17 7. On or about April 4, 2017, Plaintiff entered into a *Motor Vehicle Lease*  
18 *Agreement (Closed End)* (the "Lease") with BMW LV, with BMW FS serving as the  
19 administrator of the Lease.

20 8. As part of the Lease, Plaintiff traded in his 2015 Audi A6 2.0T and lease a 2017  
21 BMW 5-Series with 103 miles on the odometer (the "Vehicle").

22 9. As part of the Lease, Plaintiff also agreed to pay a monthly payment of \$1,238.37  
23 each month for 42 months.

24 10. When Plaintiff entered into the Lease, he relied on the fact that the Vehicle would

25

1 conform to his reasonable expectations of how a vehicle should perform, would be fit for a  
2 particular purpose, and would be of the same quality and character of other similar vehicles.

3 11. Unfortunately, the Vehicle has fallen well below Plaintiff's reasonable  
4 expectations.

5 12. On or about July 17, 2017, Plaintiff took the Vehicle to BMW of Henderson  
6 complaining that, among other things, the car would shake when braking and that the steering  
7 column was often noisy and squeaky.  
8

9 13. While the Vehicle was at BMW of Henderson for fourteen (14) days, from July  
10 17, 2017 to July 31, 2017, BMW of Henderson confirmed the Vehicle would shake while  
11 braking.

12 14. To fix the problem, BMW of Henderson burnished the brakes and rotors, but  
13 when that was unsuccessful BMW of Henderson removed the wheels and calipers to resurface  
14 the rotors.  
15

16 15. BMW of Henderson claimed this resolved Plaintiff's issue with shaking while  
17 braking.

18 16. While the Vehicle was at BMW of Henderson, it was also confirmed the Vehicle  
19 had faulty components in the steering column.  
20

21 17. After a visual inspection, BMW of Henderson concluded it was an internal issue  
22 within the steering column motors and that the steering column needed to be entirely replaced.

23 18. On or about December 29, 2017, Plaintiff again brought the Vehicle to BMW of  
24 Henderson, complaining that the Vehicle still shook when braking.

25 19. After inspection, BMW of Henderson balanced all of the wheels on the Vehicle,  
26 lubed the hubs, and torqued the wheels.

27 20. Plaintiff also requested a multi-point inspection of the Vehicle, which showed the  
28



1 front brakes measured at 12 mm thickness, while the rear brakes measured at 10 mm thickness.

2 21. Additionally, following the inspection, BMW Henderson indicated all other  
3 components of the Vehicle were functioning properly.

4 22. On or about August 2, 2018, Plaintiff took the Vehicle to BMW LV, complaining  
5 of the same problems that he persisted since he began the Lease.

6 23. Again, the tires on the Vehicle were balanced and a multi-point inspection  
7 performed.

8 24. On or about September 4, 2018, Plaintiff took the Vehicle back to BMW LV,  
9 again complaining that the Vehicle shook when stopping at freeway speeds.

10 25. BMW LV found that the front rotors on the Vehicle have excessive thickness  
11 variation.

12 26. BMW LV replaced the front brake pads and thinned the rotors to decrease the  
13 thickness variation.

14 27. On September 11, 2018, Plaintiff again returned the Vehicle to BMW LV, again,  
15 complaining the Vehicle shook when stopping at highway speeds.

16 28. BMW LV found that the "FRONT ROTORS [had] EXCESSIVE DTV."

17 29. As a result, BMW LV removed and replaced the front Vehicle rotors and brake  
18 pads.

19 30. Despite this, the Vehicle continued to have problems that make it unsafe to  
20 operate, have shaken Plaintiff's confidence in the vehicle, and/or substantially decreased the  
21 value of the Vehicle.

22 **FIRST CAUSE OF ACTION**  
23 **Breach of Contract – BMW LV & BMW FS**

24 31. Plaintiff hereby incorporates all of the above allegations contained in above  
25 Paragraphs as if fully set forth herein.

3 33. BMW LV and/or BMW FS breached the material terms of this contract by not  
4 providing Plaintiff with a fully functional and safely-operable vehicle.

34. BMW LV and/or BMW FS's breach of the material terms of this contract were not excused or justified in any manner, nor were there any unfulfilled conditions precedent that would be excused FCA's performance under the contract.

9            35. As a result of BMW LV and/or BMW FS's actions, Plaintiff has suffered  
10 damages in excess of \$15,000.00.

11 36. As a result of BMW LV and/or BMW FS's actions, Plaintiff has also found it  
12 necessary to retain LEAVITT LEGAL GROUP, P.C. to prosecute this action, and Plaintiff is entitled  
13 to reasonable attorneys' fees and costs.

15           37. As a result of BMW LV and/or BMW FS's actions, Plaintiff is entitled to punitive  
16 damages against BMW LV and/or BMW FS.

### **Breach of Implied Covenant of Good Faith and Fair Dealing - BMW LV & BMW FS**

19            38. Plaintiff hereby incorporates all of the above allegations contained in above  
20 Paragraphs as if fully set forth herein.

21 39. There was a valid contract between Plaintiff and BMW LV and/or BMW FS, to  
22 temporarily acquire a fully functional and safely-operable vehicle.

40. The contract between Plaintiff and BMW LV and/or BMW FS has, as does every other contract formed in the State of Nevada, and implied covenant to perform the contract in good faith and in a manner consistent with the spirit of the agreement.

41. Plaintiff reasonable and justifiably expected to receive certain benefits as part of his contract with BMW LV and/or BMW FS, however, BMW LV and/or BMW FS's

1 performance under the contract has been in a manner that violates the terms of the agreement and  
2 is inconsistent with the spirit of the agreement.

3 42. BMW LV and/or BMW FS's actions in not performing in a manner consistent  
4 with the spirit of the agreement was deliberate.

5 43. As a result of BMW LV and/or BMW FS's actions, Plaintiff has suffered  
6 damages in excess of \$15,000.00.

7 44. As a result of BMW LV and/or BMW FS's actions, Plaintiff has also found it  
8 necessary to retain LEAVITT LEGAL GROUP, P.C. to prosecute this action, and Plaintiff is entitled  
9 to reasonable attorneys' fees and costs.

10 45. As a result of BMW LV and/or BMW FS's actions, Plaintiff is entitled to punitive  
11 damages against BMW LV and/or BMW FS.

12 **THIRD CAUSE OF ACTION**

13 **Rescission of Purchase and Refund of Purchase Price – NRS 597.630 –  
14 BMW LV & BMW NA**

15 46. Plaintiff hereby incorporates all of the above allegations contained in above  
16 Paragraphs as if fully set forth herein.

17 47. Plaintiff acquired the Vehicle from BMW LV and/or BMW FS for his personal,  
18 family, or household use.

19 48. Plaintiff notified BMW LV and/or BMW FS in writing, either through its agents or  
20 authorized dealers or directly to BMW LV and/or BMW FS, of persistent problems with the  
21 Vehicle that made it unsafe to drive.

22 49. Plaintiff afforded BMW LV and/or BMW FS with a reasonable number of  
23 attempts to correct the defect(s) in the Vehicle, however, the issues with the Vehicle were not  
24 remedied.

25 50. Plaintiff attempted to submit this matter to FCA for informal dispute resolution,  
26  
27  
28



1 as required by NRS 597.620, but those efforts were fruitless.

2 51. As a result of BMW LV and/or BMW FS's actions, Plaintiff has suffered  
3 damages in excess of \$15,000.00.

4 52. As a result of BMW LV and/or BMW FS's actions, Plaintiff has also found it  
5 necessary to retain LEAVITT LEGAL GROUP, P.C. to prosecute this action, and Plaintiff is entitled  
6 to reasonable attorneys' fees and costs.

7 53. As a result of BMW LV and/or BMW FS's actions, Plaintiff is entitled to punitive  
8 damages against BMW LV and/or BMW FS.

10 **FOURTH CAUSE OF ACTION**

11 **Moss-Magnuson Warranty Act— 15 U.S.C. § 2301, *et seq.* – BMW LV & BMW NA**

12 54. Plaintiff hereby incorporates all of the above allegations contained in above  
13 Paragraphs as if fully set forth herein.

14 55. Plaintiff is a consumer as defined by 15 U.S.C. § 2301(3).

15 56. The Vehicle is a consumer product as defined by 15 U.S.C. § 2301(4)-(5).

16 57. BMW LV and/or BMW NA are warrantors as defined by 15 U.S.C. § 2301(6)-(7)

17 58. The Moss-Magnuson Act requires BMW LV and/or BMW NA to remedy any of  
18 the Vehicle's defects, malfunctions, or nonconformity within a reasonable time.

19 59. BMW LV and/or BMW NA have failed to remedy the Vehicle's defects,  
20 malfunctions, or nonconformity within a reasonable time.

21 60. Plaintiff notified BMW LV and/or BMW NA in writing, either through its agents  
22 or authorized dealers or directly to BMW LV and/or BMW NA, of persistent problems with the  
23 Vehicle that made it unsafe to drive.

24 61. Plaintiff afforded BMW LV and/or BMW NA with a reasonable number of  
25 attempts to correct the defect(s) in the Vehicle, however, the issues with the Vehicle were not  
26 remedied.

1            62.    The Vehicle has failed its essential purpose because, among other things, it is  
2    unsafe to operate.

3 63. As such, BMW LV and/or BMW NA has violated the Moss-Magnuson Warranty  
4 Act.

64. As a result of BMW LV and/or BMW NA's actions, Plaintiff has suffered damages in excess of \$15,000.00.

8           65. As a result of BMW LV and/or BMW NA's actions, Plaintiff has also found it  
9 necessary to retain LEAVITT LEGAL GROUP, P.C. to prosecute this action, and Plaintiff is entitled  
10 to reasonable attorneys' fees and costs as stated in 15 U.S.C. § 2301(d)(2)

66. As a result of BMW LV and/or BMW FS's actions, Plaintiff is entitled to punitive damages against BMW LV and/or BMW FS.

**FIFTH CAUSE OF ACTION**  
**Breach of Express and Implied Warranties – NRS 104 – Defendants**

15 67. Plaintiff hereby incorporates all of the above allegations contained in above  
16 Paragraphs as if fully set forth herein.

68. Throughout his interactions with Defendants, and its agents or authorized dealers, Defendants made certain warranties, either expressly or impliedly, about various traits the Vehicle possessed, including, but not limited to, the quality of Vehicle, the Vehicle's fitness for a particular purpose, and/or the Vehicle's merchantability.

69. Defendants knew, or had reason to know, Plaintiff would rely on Defendants' warranties and Defendants' skill and judgment, and such warranties became a basis of the bargain between Defendants and Plaintiff.

70. Plaintiff also believed, and Defendants are in fact, a merchant of the type of goods Plaintiff bought from Defendants.

71. Defendants have not provided Plaintiff with a vehicle that conforms with the

1 warranties and representations it made to Plaintiff.

2 72. As a result of Defendant's actions, Plaintiff has suffered damages in excess of  
3 \$15,000.00.

4 73. As a result of Defendant's actions, Plaintiff has also found it necessary to retain  
5 LEAVITT LEGAL GROUP, P.C. to prosecute this action, and Plaintiff is entitled to reasonable  
6 attorneys' fees and costs.

7 74. As a result of Defendants' actions, Plaintiff is entitled to punitive damages against  
8 Defendants.  
9

10 **SIXTH CAUSE OF ACTION**

11 **Breach of Obligation of Good Faith – NRS 104.1304, *et seq.* – Defendants**

12 75. Plaintiff hereby incorporates all of the above allegations contained in above  
13 Paragraphs as if fully set forth herein.

14 76. Pursuant to NRS 104.1304, "[e]very contract or duty within the Uniform  
15 Commercial Code imposes an obligation of good faith in its performance and enforcement."

16 77. Accordingly, Defendants have a duty to provide Plaintiff with a Vehicle free of  
17 defects and/or repair any defects.

18 78. Defendants breached this obligation because the Vehicle has, and continues to,  
19 suffer from defects as described herein.  
20

21 79. As a result of Defendant's actions, Plaintiff has suffered damages in excess of  
22 \$15,000.00.

23 80. As a result of Defendant's actions, Plaintiff has also found it necessary to retain  
24 LEAVITT LEGAL GROUP, P.C. to prosecute this action, and Plaintiff is entitled to reasonable  
25 attorneys' fees and costs.

26 81. As a result of Defendants' actions, Plaintiff is entitled to punitive damages against  
27 Defendants.  
28



1 WHEREFORE, Plaintiff prays for relief as follows:

- 2 1. For damages in excess of \$15,000.00 together with any interest due thereon at the  
3 applicable rate of interest;
- 4 2. For punitive damages in an amount to be determined at trial;
- 5 3. For costs of suit incurred herein;
- 6 4. For reasonable attorneys' fees;
- 7 5. For other such relief as the Court may deem just and proper.

8 DATED this 4th day of October, 2018.

9 LEAVITT LEGAL GROUP, P.C.

10  
11 By:

Kristofer D. Leavitt  
12 Kristofer D. Leavitt, Esq. (13173)  
13 612 S. 10th Street  
14 Las Vegas, Nevada 89101  
15  
16  
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28

# Exhibit “B”



**Service of Process  
Transmittal**

10/17/2018

CT Log Number 534246479

**TO:** Jason Bichsel  
BMW of North America, LLC  
300 Chestnut Ridge Rd  
Woodcliff Lake, NJ 07677-7731

**RE: Process Served in Nevada**

**FOR:** BMW Financial Services NA, LLC (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Jan Sheinfeld, etc., Pltf. vs. BMW Financial Services Na, LLC, etc., et al., Dfts.

**DOCUMENT(S) SERVED:** Summons, Complaint

**COURT/AGENCY:** Clark County District Court, NV  
Case # A18782227C

**NATURE OF ACTION:** Product Liability Litigation - Lemon Law - 2017 BMW 5-Series

**ON WHOM PROCESS WAS SERVED:** The Corporation Trust Company of Nevada, Carson City, NV

**DATE AND HOUR OF SERVICE:** By Process Server on 10/17/2018 at 12:12

**JURISDICTION SERVED :** Nevada

**APPEARANCE OR ANSWER DUE:** Within 20 Days after service, exclusive of the day of service

**ATTORNEY(S) / SENDER(S):** Kristofer D. Leavitt  
Leavitt Legal Group, P.C.  
612 S. 10th Street  
Las Vegas, NV 89101  
702-423-7208

**ACTION ITEMS:** SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780100113523

Image SOP

Email Notification, Mark Smith mark.smith@bmwfs.com

Email Notification, Sabrina Morrell sabrina.morrell@bmwfs.com

Email Notification, Jason Bichsel jason.bichsel@bmwfs.com

**SIGNED:** The Corporation Trust Company of Nevada  
**ADDRESS:** 701 S Carson St.  
Suite 200

Carson City, NV 89701-5239  
**TELEPHONE:** 314-863-5545

# Exhibit “C”



Electronically Filed  
10/29/2018 12:04 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 **ANS**  
2 Martin A. Little, Esq., NV Bar No. 7067  
3 Alexander Villamar, Esq., NV Bar No. 9927  
4 **Howard & Howard Attorneys PLLC**  
5 3800 Howard Hughes Pkwy., Ste. 1000  
6 Las Vegas, NV 89169  
7 Telephone: (702) 257-1483  
8 Facsimile: (702) 567-1568  
9 E-Mail: [mal@h2law.com](mailto:mal@h2law.com); [av@h2law.com](mailto:av@h2law.com)  
10 *Attorneys for Defendant,*  
11 *JRJ Investments, Inc. dba BMW of Las Vegas*

8 **DISTRICT COURT**  
9  
10 **CLARK COUNTY, NEVADA**

11 JAN SHEINFELD, an individual  
12  
13 Plaintiff,

14 vs.

15 BMW FINANCIAL SERVICES NA, LLC, a  
16 foreign limited liability corporation; BMW OF  
17 NORTH AMERICA, LLC, a foreign limited  
18 liability corporation; JRJ INVESTMENTS,  
19 INC. d/b/a BMW OF LAS VEGAS, a Nevada  
20 limited liability corporation; DOES 1 through  
21 20, inclusive; and ROE CORPORATIONS 1  
22 through 20, inclusive;

23 Defendants.

**CASE NO.: A-18-782227-C**  
**DEPT. NO.: XXIV**

**DEFENDANT JRJ INVESTMENTS,  
INC. dba BMW OF LAS VEGAS'S  
ANSWER TO COMPLAINT**

24 Defendant JRJ Investments, Inc. dba BMW of Las Vegas ("Defendant"), by and through  
25 its attorneys, Howard & Howard Attorneys PLLC, as and for its Answer to the Complaint (the  
26 "Complaint") on file herein, admits, denies and alleges as follows:

27 **PARTIES, JURISDICTION, AND VENUE**

28 1. Answering Paragraph 1 of the Complaint, Defendant is without knowledge or  
information sufficient to form a belief as to the truthfulness of the allegations contained therein,  
and therefore denies the same.

2. Answering Paragraph 2 of the Complaint, Defendant is without knowledge or

**Howard & Howard Attorneys PLLC**  
3800 Howard Hughes Pkwy., Ste. 1000  
Las Vegas, NV 89169  
(702) 257-1483

Howard & Howard Attorneys PLLC  
3800 Howard Hughes Pkwy., Ste. 1000  
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1 information sufficient to form a belief as to the truthfulness of the allegations contained therein,  
2 and therefore denies the same.

3 3. Answering Paragraph 3 of the Complaint, Defendant is without knowledge or  
4 information sufficient to form a belief as to the truthfulness of the allegations contained therein,  
5 and therefore denies the same.

6 4. Answering Paragraph 4 of the Complaint, Defendant admits it is a Nevada  
7 corporation, duly licensed and conducting business in Nevada, and denies the remaining  
8 allegations contained therein.

9 5. Answering Paragraph 5 of the Complaint, Defendant is without knowledge or  
10 information sufficient to form a belief as to the truthfulness of the allegations contained therein,  
11 and therefore denies the same.

12 6. Answering Paragraph 6 of the Complaint, Defendant is without knowledge or  
13 information sufficient to form a belief as to the truthfulness of the allegations contained therein,  
14 and therefore denies the same.

15 **GENERAL ALLEGATIONS**

16  
17 7. Answering Paragraph 7 of the Complaint, Defendant admits it entered into a  
18 Motor Vehicle Lease Agreement with Plaintiff on April 4, 2017, which document speaks for  
19 itself.

20 8. Answering Paragraph 8 of the Complaint, Defendant admits that the Motor  
21 Vehicle Lease Agreement (the "Lease"), which document speaks for itself, included a trade-in  
22 vehicle consisting of a 2015 Audi A6 2.0T.

23 9. Answering Paragraph 9 of the Complaint, Defendant admits that the Lease,  
24 which document speaks for itself, required Plaintiff to make monthly payments of \$1,238.37  
25 per month for 42 months.

26 10. Answering Paragraph 10 of the Complaint, Defendant responds that the  
27 allegations call for a legal conclusion to which no response is required. To the extent a response  
28 is required, Defendant responds that the Lease speaks for itself, and is without knowledge or

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1 information sufficient to form a belief as to the truthfulness of the allegations contained therein,  
2 and therefore denies the same.

3 11. Answering Paragraph 11 of the Complaint, Defendant responds that the  
4 allegations call for a legal conclusion to which no response is required. To the extent a response  
5 is required, Defendant is without knowledge or information sufficient to form a belief as to the  
6 truthfulness of the allegations contained therein, and therefore denies the same.

7 12. Answering Paragraph 12 of the Complaint, Defendant admits that Plaintiff took  
8 the subject vehicle to BMW of Henderson on or about July 17, 2017. The documents describing  
9 Plaintiff's complaints and the services provided by BMW of Henderson on that occasion, if  
10 any, speak for themselves. Defendant is without knowledge or information sufficient to form  
11 a belief as to the truthfulness of the remaining allegations contained therein, and therefore  
12 denies the same.

13 13. Answering Paragraph 13 of the Complaint, Defendant responds that the  
14 documents describing Plaintiff's complaints and the services provided by BMW of Henderson  
15 on that occasion, if any, speak for themselves. Defendant is without knowledge or information  
16 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
17 and therefore denies the same.

18 14. Answering Paragraph 14 of the Complaint, Defendant responds that the  
19 documents describing Plaintiff's complaints and the services provided by BMW of Henderson  
20 on that occasion, if any, speak for themselves. Defendant is without knowledge or information  
21 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
22 and therefore denies the same.

23 15. Answering Paragraph 15 of the Complaint, Defendant responds that the  
24 documents describing Plaintiff's complaints and the services provided by BMW of Henderson  
25 on that occasion, if any, speak for themselves. Defendant is without knowledge or information  
26 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
27 and therefore denies the same.



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1           16. Answering Paragraph 16 of the Complaint, Defendant responds that the  
2 documents describing Plaintiff's complaints and the services provided by BMW of Henderson  
3 on that occasion, if any, speak for themselves. Defendant is without knowledge or information  
4 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
5 and therefore denies the same.

6           17. Answering Paragraph 17 of the Complaint, Defendant responds that the  
7 documents describing Plaintiff's complaints and the services provided by BMW of Henderson  
8 on that occasion, if any, speak for themselves. Defendant is without knowledge or information  
9 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
10 and therefore denies the same.

11           18. Answering Paragraph 18 of the Complaint, Defendant admits that Plaintiff took  
12 the subject vehicle to BMW of Henderson on or about December 29, 2017. The documents  
13 describing Plaintiff's complaints and the services provided by BMW of Henderson on that  
14 occasion, if any, speak for themselves. Defendant is without knowledge or information  
15 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
16 and therefore denies the same.

17           19. Answering Paragraph 19 of the Complaint, Defendant responds that the  
18 documents describing Plaintiff's complaints and the services provided by BMW of Henderson  
19 on that occasion, if any, speak for themselves. Defendant is without knowledge or information  
20 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
21 and therefore denies the same.

22           20. Answering Paragraph 20 of the Complaint, Defendant responds that the  
23 documents describing Plaintiff's complaints and the services provided by BMW of Henderson  
24 on that occasion, if any, speak for themselves. Defendant is without knowledge or information  
25 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
26 and therefore denies the same.  
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1           21. Answering Paragraph 21 of the Complaint, Defendant responds that the  
2 documents describing Plaintiff's complaints and the services provided by BMW of Henderson  
3 on that occasion, if any, speak for themselves. Defendant is without knowledge or information  
4 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
5 and therefore denies the same.

6           22. Answering Paragraph 22 of the Complaint, Defendant admits that Plaintiff took  
7 the subject vehicle to BMW of Las Vegas on or about August 2, 2018. The documents  
8 describing Plaintiff's complaints and the services provided by BMW of Las Vegas on that  
9 occasion, if any, speak for themselves. Defendant is without knowledge or information  
10 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
11 and therefore denies the same.

12           23. Answering Paragraph 23 of the Complaint, Defendant responds that the  
13 documents describing Plaintiff's complaints and the services provided by BMW of Las Vegas  
14 on that occasion, if any, speak for themselves. Defendant is without knowledge or information  
15 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
16 and therefore denies the same.

17           24. Answering Paragraph 24 of the Complaint, Defendant admits that Plaintiff took  
18 the subject vehicle to BMW of Las Vegas on or about September 4, 2018. The documents  
19 describing Plaintiff's complaints and the services provided by BMW of Las Vegas on that  
20 occasion, if any, speak for themselves. Defendant is without knowledge or information  
21 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
22 and therefore denies the same.

23           25. Answering Paragraph 25 of the Complaint, Defendant responds that the  
24 documents describing Plaintiff's complaints and the services provided by BMW of Las Vegas  
25 on that occasion, if any, speak for themselves. Defendant is without knowledge or information  
26 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
27 and therefore denies the same.  
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1           26.     Answering Paragraph 26 of the Complaint, Defendant responds that the  
2 documents describing Plaintiff's complaints and the services provided by BMW of Las Vegas  
3 on that occasion, if any, speak for themselves. Defendant is without knowledge or information  
4 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
5 and therefore denies the same.

6           27.     Answering Paragraph 27 of the Complaint, Defendant admits that Plaintiff took  
7 the subject vehicle to BMW of Las Vegas on or about September 11, 2018. The documents  
8 describing Plaintiff's complaints and the services provided by BMW of Las Vegas on that  
9 occasion, if any, speak for themselves. Defendant is without knowledge or information  
10 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
11 and therefore denies the same.

12           28.     Answering Paragraph 28 of the Complaint, Defendant responds that the  
13 documents describing Plaintiff's complaints and the services provided by BMW of Las Vegas  
14 on that occasion, if any, speak for themselves. Defendant is without knowledge or information  
15 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
16 and therefore denies the same.

17           29.     Answering Paragraph 29 of the Complaint, Defendant responds that the  
18 documents describing Plaintiff's complaints and the services provided by BMW of Las Vegas  
19 on that occasion, if any, speak for themselves. Defendant is without knowledge or information  
20 sufficient to form a belief as to the truthfulness of the remaining allegations contained therein,  
21 and therefore denies the same.

22           30.     Answering Paragraph 30 of the Complaint, Defendant is without knowledge or  
23 information sufficient to form a belief as to the truthfulness of the allegations contained therein,  
24 and therefore denies the same.

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1 **FIRST CAUSE OF ACTION**

2 **Breach of Contract – BMW LV & BMW FS**

3 31. Answering Paragraph 31 of the Complaint, Defendant repeats and re-alleges its  
4 answers as though fully contained therein.

5 32. Answering Paragraph 32 of the Complaint, Defendant admits it entered into a  
6 Motor Vehicle Lease Agreement with Plaintiff on April 4, 2017, which document speaks for  
7 itself. Defendant is without knowledge or information sufficient to form a belief as to the  
8 truthfulness of the remaining allegations contained therein, and therefore denies the same.

9 33. Answering Paragraph 33 of the Complaint, as they pertain to Defendant, the  
10 allegations contained therein are denied.

11 34. Answering Paragraph 34 of the Complaint, as they pertain to Defendant, the  
12 allegations contained therein are denied.

13 35. Answering Paragraph 35 of the Complaint, as they pertain to Defendant, the  
14 allegations contained therein are denied.

15 36. Answering Paragraph 36 of the Complaint, as they pertain to Defendant, the  
16 allegations contained therein are denied.

17 37. Answering Paragraph 37 of the Complaint, as they pertain to Defendant, the  
18 allegations contained therein are denied.

19 **SECOND CAUSE OF ACTION**

20 **Breach of Implied Covenant of Good Faith and Fair Dealing – BMW LV & BMW FS**

21 38. Answering Paragraph 38 of the Complaint, Defendant repeats and re-alleges its  
22 answers as though fully contained therein.

23 39. Answering Paragraph 39 of the Complaint, Defendant admits it entered into a  
24 Motor Vehicle Lease Agreement with Plaintiff on April 4, 2017, which document speaks for  
25 itself. Defendant is without knowledge or information sufficient to form a belief as to the  
26 truthfulness of the remaining allegations contained therein, and therefore denies the same.  
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40. Answering Paragraph 40 of the Complaint, Defendant responds that the allegations call for a legal conclusion to which no response is required. To the extent a response is required, Defendant responds that the Motor Vehicle Lease Agreement speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained therein, and therefore denies the same.

41. Answering Paragraph 41 of the Complaint, as they pertain to Defendant, the allegations contained therein are denied.

42. Answering Paragraph 42 of the Complaint, as they pertain to Defendant, the allegations contained therein are denied.

43. Answering Paragraph 43 of the Complaint, as they pertain to Defendant, the allegations contained therein are denied.

44. Answering Paragraph 44 of the Complaint, as they pertain to Defendant, the allegations contained therein are denied.

45. Answering Paragraph 45 of the Complaint, as they pertain to Defendant, the allegations contained therein are denied.

### **THIRD CAUSE OF ACTION**

#### **Rescission of Purchase and Refund of Purchase Price – NRS 597.630 –**

#### **BMW LV & BMW NA**

46. Answering Paragraph 46 of the Complaint, Defendant repeats and re-alleges its answers as though fully contained therein.

47. Answering Paragraph 47 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained therein, and therefore denies the same.

48. Answering Paragraph 48 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained therein, and therefore denies the same.



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1           49.     Answering Paragraph 49 of the Complaint, Defendant is without knowledge or  
2 information sufficient to form a belief as to the truthfulness of the allegations contained therein,  
3 and therefore denies the same.

4           50.     Answering Paragraph 50 of the Complaint, Defendant is without knowledge or  
5 information sufficient to form a belief as to the truthfulness of the allegations contained therein,  
6 and therefore denies the same.

7           51.     Answering Paragraph 51 of the Complaint, as they pertain to Defendant, the  
8 allegations contained therein are denied.

9           52.     Answering Paragraph 52 of the Complaint, as they pertain to Defendant, the  
10 allegations contained therein are denied.

11           53.     Answering Paragraph 53 of the Complaint, as they pertain to Defendant, the  
12 allegations contained therein are denied.

13                           **FOURTH CAUSE OF ACTION**

14                   **Moss-Magnuson Warranty Act 15 U.S.C. § 2301, *et seq.* – BMW LV & BMW NA**

15           54.     Answering Paragraph 54 of the Complaint, Defendant repeats and re-alleges its  
16 answers as though fully contained therein.

17           55.     Answering Paragraph 55 of the Complaint, Defendant responds that the  
18 allegations call for a legal conclusion to which no response is required. To the extent a response  
19 is required, Defendant responds that 15 U.S.C. § 2301(3) speaks for itself. Defendant is without  
20 knowledge or information sufficient to form a belief as to the truthfulness of the remaining  
21 allegations contained therein, and therefore denies the same.

22           56.     Answering Paragraph 56 of the Complaint, Defendant responds that the  
23 allegations call for a legal conclusion to which no response is required. To the extent a response  
24 is required, Defendant responds that 15 U.S.C. § 2301(4)-(5) speaks for itself. Defendant is  
25 without knowledge or information sufficient to form a belief as to the truthfulness of the  
26 remaining allegations contained therein, and therefore denies the same.  
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1           57. Answering Paragraph 57 of the Complaint, Defendant responds that the  
2 allegations call for a legal conclusion to which no response is required. To the extent a response  
3 is required, Defendant responds that 15 U.S.C. § 2301(6)-(7) speaks for itself. Defendant is  
4 without knowledge or information sufficient to form a belief as to the truthfulness of the  
5 remaining allegations contained therein, and therefore denies the same.

6           58. Answering Paragraph 58 of the Complaint, Defendant responds that the  
7 allegations call for a legal conclusion to which no response is required. To the extent a response  
8 is required, Defendant responds that the Moss-Magnuson Act speaks for itself. Defendant is  
9 without knowledge or information sufficient to form a belief as to the truthfulness of the  
10 remaining allegations contained therein, and therefore denies the same.

11           59. Answering Paragraph 59 of the Complaint, as they pertain to Defendant, the  
12 allegations contained therein are denied.

13           60. Answering Paragraph 60 of the Complaint, Defendant is without knowledge or  
14 information sufficient to form a belief as to the truthfulness of the allegations contained therein,  
15 and therefore denies the same.

16           61. Answering Paragraph 61 of the Complaint, Defendant is without knowledge or  
17 information sufficient to form a belief as to the truthfulness of the allegations contained therein,  
18 and therefore denies the same.

19           62. Answering Paragraph 62 of the Complaint, as they pertain to Defendant, the  
20 allegations contained therein are denied.

21           63. Answering Paragraph 63 of the Complaint, as they pertain to Defendant, the  
22 allegations contained therein are denied.

23           64. Answering Paragraph 64 of the Complaint, as they pertain to Defendant, the  
24 allegations contained therein are denied.

25           65. Answering Paragraph 65 of the Complaint, as they pertain to Defendant, the  
26 allegations contained therein are denied.  
27  
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### FIFTH CAUSE OF ACTION

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## **SIXTH CAUSE OF ACTION**

### **Breach of Obligation of Good Faith – NRS 104.1304, *et seq.* – Defendants**

75. Answering Paragraph 75 of the Complaint, Defendant repeats and re-alleges its answers as though fully contained therein.

76. Answering Paragraph 76 of the Complaint, Defendant responds that the allegations call for a legal conclusion to which no response is required. To the extent a response is required, Defendant responds that NRS 104.1304 speaks for itself.

77. Answering Paragraph 77 of the Complaint, Defendant responds that the allegations call for a legal conclusion to which no response is required. To the extent a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained therein, and therefore denies the same.

78. Answering Paragraph 78 of the Complaint, as they pertain to Defendant, the allegations contained therein are denied.

79. Answering Paragraph 79 of the Complaint, as they pertain to Defendant, the allegations contained therein are denied.

80. Answering Paragraph 80 of the Complaint, as they pertain to Defendant, the allegations contained therein are denied.

81. Answering Paragraph 81 of the Complaint, as they pertain to Defendant, the allegations contained therein are denied.

82. Defendant denies any allegation not specifically admitted herein.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be granted.

### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to any recovery from Defendant due to the doctrines of laches, waiver, and estoppel.



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1 THIRD AFFIRMATIVE DEFENSE

2 Plaintiff is not entitled to any recovery from Defendant due to the doctrine of unclean  
3 hands.

4 FOURTH AFFIRMATIVE DEFENSE

5 The damages, if any, which Plaintiff has suffered were caused in whole or in part by the  
6 acts or omissions of Plaintiff, his agents and representatives.

7 FIFTH AFFIRMATIVE DEFENSE

8 Plaintiff's claims are barred by Plaintiff's own fraudulent acts, fraud, fraudulent  
9 inducements, omissions and misrepresentations whether intentional, negligent, or constructive.

10 SIXTH AFFIRMATIVE DEFENSE

11 Plaintiff's claims are barred as Plaintiff breached his duties to Defendant.

12 SEVENTH AFFIRMATIVE DEFENSE

13 Plaintiff's claims are barred under the doctrine of economic duress.

14 EIGHTH AFFIRMATIVE DEFENSE

15 Defendant at all times relevant hereto acted truthfully, honestly and in good faith in its  
16 dealings with Plaintiff.

17 NINTH AFFIRMATIVE DEFENSE

18 Plaintiff failed to take reasonable steps to mitigate his damages, thus completely or  
19 partially barring his claims.

20 TENTH AFFIRMATIVE DEFENSE

21 By virtue of his conduct, Plaintiff should be estopped from making any claim against  
22 Defendant.

23 ELEVENTH AFFIRMATIVE DEFENSE

24 The damages, if any, that were allegedly sustained by Plaintiff as a result of the acts  
25 alleged in the Complaint were caused by the acts, omissions, negligence and/or intentional  
26 misconduct of third parties over whom Defendant had no control.  
27  
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TWELFTH AFFIRMATIVE DEFENSE

Plaintiff has suffered no recoverable damages.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant has been required to retain the services of an attorney to enforce the rights herein asserted, and is entitled to the fees and costs heretofore paid or incurred for such damages, and are further entitled to attorney's fees and costs to defend this action.

FOURTEENTH AFFIRMATIVE DEFENSE

The complained of acts or omissions were legal, justified, and reasonable under the circumstances.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred due to his breach of obligations.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred due to lack, failure and/or breach of conditions precedent and/or subsequent.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant has not retained any benefit which in equity or good conscience belong to Plaintiff.

EIGHTEENTH AFFIRMATIVE DEFENSE

The alleged damages complained of by Plaintiff were caused by a new, independent and effective intervening cause.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the statute of frauds, and the parole evidence rule.

TWENTIETH AFFIRMATIVE DEFENSE

Defendant did not supply false information to Plaintiff or any third party.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Defendant exercised reasonable care and competence in obtaining and communicating information to Plaintiff.

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1 TWENTY-SECOND AFFIRMATIVE DEFENSE

2 Under the factual circumstances set forth in the Complaint, there was a misuse of the  
3 product by Plaintiff and misuse of the vehicle is an absolute defense to any recovery.

4 TWENTY-THIRD AFFIRMATIVE DEFENSE

5 Defendant did not fail to disclose any material fact in connection with the sale of goods  
6 or services.

7 TWENTY-FOURTH AFFIRMATIVE DEFENSE

8 Defendant at no time acted with malice, oppression or conscious disregard in its dealings  
9 with Plaintiff.

10 TWENTY-FIFTH AFFIRMATIVE DEFENSE

11 At the time of the lease of the subject vehicle, Defendant had no reason to know of any  
12 particular purpose for which Plaintiff required the vehicle or that Plaintiff was relying on  
13 Defendant's skill or judgment in selecting or furnishing a suitable vehicle.

14 TWENTY-SIXTH AFFIRMATIVE DEFENSE

15 The basis of the Complaint and the damages, if any, allegedly incurred arise out of an  
16 alleged breach of contract, and Plaintiff is not entitled to recover exemplary or punitive  
17 damages.

18 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

19 Any action taken by the Defendant was proper, legal, and was not motivated by hatred  
20 and/or ill will, or with the deliberate intent to injure Plaintiff.

21 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

22 Any alleged representations or warranties made by Defendant, through its agents, were  
23 not in writing and are not enforceable.

24 TWENTY-NINTH AFFIRMATIVE DEFENSE

25 The conduct alleged in the Complaint, which Defendant denies, does not rise to the level  
26 of being considered extreme, severe, beyond all bounds of decency, atrocious or intolerable.  
27  
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1 THIRTIETH AFFIRMATIVE DEFENSE

2 If the subject vehicle was in any way defective, which Defendant expressly denies, the  
3 said defect occurred at some time subsequent to leaving Defendant's control, and as a result of  
4 the manner in which it was used, maintained or repaired over which Defendant had no control.

5 THIRTY-FIRST AFFIRMATIVE DEFENSE

6 Any alleged statements made by Defendant's agents, which Defendant denies, were  
7 merely an opinion or commendation of goods and does not create any express or implied  
8 warranty.

9 THIRTY-SECOND AFFIRMATIVE DEFENSE

10 At the time of the sale, the subject vehicle was fit for the ordinary purposes for which it  
11 was to be used.

12 THIRTY-THIRD AFFIRMATIVE DEFENSE

13 Pursuant to NRCP 11, as amended, all possible affirmative defenses may not  
14 have been alleged herein, insofar as sufficient facts were not available after reasonable inquiry  
15 upon the filing of this Answer, and, therefore, Defendant reserves the right to amend this  
16 Answer to allege additional affirmative defenses if subsequent investigation warrants.

17 WHEREFORE, Defendant demands judgment as follows:

18 1. That Plaintiff's Complaint be dismissed with prejudice, and that he take nothing  
19 thereby;

20 2. That Defendant be awarded its reasonable attorney's fees and costs of suit  
21 herein; and  
22

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25 ///



1 3. For such other and further relief as the Court deems just and proper.

2 DATED this 29 day of October, 2018.

3 HOWARD & HOWARD ATTORNEYS, PLLC

4 By: 

5 Martin A. Little, Esq.  
6 Alexander Villamar, Esq.  
7 3800 Howard Hughes Pkwy., Ste. 1000  
8 Las Vegas, NV 89169  
9 Telephone: (702) 257-1483  
10 Facsimile: (702) 567-1568  
11 *Attorneys for Defendant,*  
12 *JRJ Investments, Inc. dba BMW of Las Vegas*

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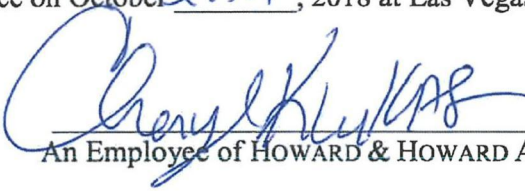
**CERTIFICATE OF SERVICE**

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada, 89169.

On the 29th day of October, 2018, I served the foregoing **DEFENDANT JRJ INVESTMENTS, INC. dba BMW OF LAS VEGAS'S ANSWER TO COMPLAINT** in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve System, which will cause this document to be served upon the following counsel of record:

Kristofer D. Leavitt, Esq.  
Leavitt Legal Group, P.C.  
612 S. 10<sup>th</sup> Street  
Las Vegas, NV 89101  
*Attorneys for Plaintiff*

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on October 29th, 2018 at Las Vegas, Nevada.

  
An Employee of HOWARD & HOWARD ATTORNEYS PLLC

Howard & Howard Attorneys PLLC  
3800 Howard Hughes Pkwy., Ste. 1000  
Las Vegas, NV 89169  
(702) 257-1483